

SERVICE DATE – OCTOBER 20, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 251X)¹

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN CHOWAN COUNTY, NC

Decided: October 19, 2005

Norfolk Southern Railway Company (NSR) and North Carolina & Virginia Railway Company, Inc., The Chesapeake and Albemarle Division (NCVA) (referred to jointly as applicants), filed a joint notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments and Discontinuances of Service, for NSR to abandon, and for NCVA to discontinue service under a lease from NSR over, a 0.33-mile line of railroad between approximately milepost NS-73.67 and milepost NS-74.00 in Edenton, Chowan County, NC. Notice of the exemption was served and published in the Federal Register on July 16, 2004 (69 FR 42804-05).

By decision served on August 20, 2004, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA) and the exemption was made subject to five environmental conditions requiring NSR to: (1) consult with the U.S. Fish and Wildlife Service (FWS), regarding Federally listed threatened and endangered species, which may occur in the vicinity of the line proposed for abandonment, regarding the environmental effects of salvage activities on those species, and regarding what mitigation, if any, could be appropriate for any such effects; (2) consult with the North Carolina Department of Environment and Natural Resources regarding state-listed threatened and endangered species which may occur in the vicinity of the line proposed for abandonment, the environmental effects of salvage activities on those species, and what mitigation, if any, could be appropriate for any such effects; (3) consult with the U.S. Army Corps of Engineers (Corps), regarding the details of the salvage activities that have occurred and what mitigation, if any, could be appropriate; (4) notify SEA of the results of these consultations; and (5) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act.²

¹ The notice served and published on July 16, 2004, embraced STB Docket No. AB-866X, North Carolina & Virginia Railroad Company, Inc., The Chesapeake and Albemarle Division—Discontinuance of Service Exemption—in Chowan County, NC.

² By decision served May 9, 2005, the section 106 historic preservation condition was removed.

By decision served on July 14, 2005, the proceeding was reopened and the following SEA recommendations were adopted: (1) removal of the FWS consultation condition; (2) modification of the consultation condition regarding state-listed species; (3) modification of the consultation condition with the Corps; (4) notification to SEA of the results of the consultations; and (5) imposition of a Division of Coastal Management condition. Also, in that same decision, NSR's request for an extension of time until October 17, 2005, to exercise the abandonment authority was granted.

On October 13, 2005, NSR filed a request for a Board determination that the time to consummate the abandonment and file its notice of consummation extends until 60 days after the removal of the final legal or regulatory barrier to consummation in accordance with 49 CFR 1152.29(e)(2). Applicant states that it has satisfied some of the environmental requirements imposed on the abandonment, but that it has not yet fully complied with the remaining conditions. Specifically, applicant indicates that it has worked to satisfy the conditions, but needs to complete consultations or paperwork with a state agency to complete the process and to make the required report to SEA.³ NSR further states that many of its engineering personnel have recently been required to spend a large amount of time working on the repair of damage to its system, especially in Louisiana due to Hurricane Katrina, and that this has delayed other projects, some involving this abandonment. NSR contends that it has until 60 days after compliance with all of the imposed conditions to file its notice of consummation, but wants to be assured that its abandonment authority will not lapse while it is finalizing compliance with the remaining applicable environmental requirements.

NSR has shown good cause for the clarification it seeks that the time period for it to consummate the abandonment and file a notice of consummation in this proceeding extends until 60 days after it reports to the Board as indicated on its satisfaction of the conditions imposed in this proceeding. Also, applicant has shown good cause to extend the time to consummate the abandonment and for filing a notice of consummation. Accordingly, both requests will be granted. The deadline for filing the notice of consummation will be extended to January 20, 2006. To provide additional certainty, this decision also clarifies that section 1152.29(e)(2) of the Board's regulations requires the filing of a notice of consummation within 1 year from the service date of the decision authorizing abandonment only if there are no legal or regulatory barriers to consummation, and that the existence of environmental conditions that have not been satisfied (as is the case here) constitutes such a barrier.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

³ As of this date, conditions (2) through (5) of the July 14, 2005 decision remain in effect.

It is ordered:

1. NSR's request for clarification as to the deadline for exercise of its abandonment authority is granted.
2. NSR's request for an extension of time until January 20, 2006, to exercise the abandonment authority is granted.
3. The authority to abandon must be exercised, and the notice of consummation must be filed by January 20, 2006, or not later than 60 days after satisfaction of the conditions imposed in this proceeding, whichever occurs later.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary